should be no further deranged or impaired than may be indispensably necessary; therefore, it has been expressly declared, that the proceeds of the sale of the real estate shall, in such cases, pass as realty to the heirs of such infant or person *non compos mentis*, as if no such sale had been made. 1800, ch. 67, s. 5; 1816, ch. 154, s. 9; 1828, ch. 26, s. 3; 1829, ch. 222.

An obvious consequence of this mutation of a wife's real estate into personalty, is, that it casts over the property thus changed, by what seems to be considered as the tacit consent or acquiescence * of the wife, (but certainly without her privy examination or express assent,) all the law which regulates personal property belonging to the wife. As land, her husband could have only a limited and qualified right to and enjoyment of it; she could not be deprived of it without her solemn, free, and express consent, which if not given, it would after her death pass to her heirs; but as personalty, on being reduced into possession by the husband, it becomes absolutely his property, and may be wasted or disposed of by him without any control from her. *Chaplin* v. *Chaplin*, 3 *P. Will.* 245. But subject to these principles in regard to the mutation of the property itself, the Court of Appeals has distinctly recognized the existence of that right of a *feme covert* in regard to her property which her husband may ask a Court of equity to put into his hands, called "the wife's equity;" and which can only be secured to her by a Court of equity. *The State* v. *Krebs*, 6 *H. & J.* 37. In relation to which, it has been laid down, that where a husband comes into equity to obtain any of his wife's *choses in action*, the Court will not receive her consent to bar her equity, until after the amount due to her has been ascertained; for, though she may not think $500 the proper subject of a settlement, she may think differently of $5,000. *Jernegan* v. *Baxter*, 6 *Mad.* 32. **459**

But although, in general, *choses in action* are not subject to be taken in execution, either at law, or in equity; yet this interest, which has been held to be in the nature of an equitable *chose in action*, will be so far considered as parcel of the realty as to be subject to be intercepted by an order of this Court for the benefit of the creditors of the deceased debtor where his personalty has been exhausted, or where the heir to whom it has been awarded is the debtor and is beyond the jurisdiction of the State. *Baltzell* v. *Foss*, 1 *H. & G.* 504; *McCanthy* v. *Goold*, 1 *Ball & B.* 389.

The rules thus laid down upon this subject must however, as it would seem, be received with some qualification. The six heirs of an intestate instituted proceedings at law to have the real estate, which they claimed by descent, divided among them; on the commissioners having made return of its value, and that it would not admit of a division with loss; one of them elected to take the whole, at a valuation. After which, the elector having failed to